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Sunset Review
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December 29, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Sunset Review of the Antidumping Duty Order on Pure
Magnesium from the People's Republic of China

Summary

We have analyzed the substantive response of the domestic interested parties in the second sunset review of the antidumping duty order covering pure magnesium from the People's Republic of China ("China"). We recommend that you approve the positions we developed in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which the Department of Commerce ("the Department") received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the margin likely to prevail

History of the Order

On May 12, 1995, the Department published an antidumping duty order on imports of pure magnesium from China, applying a country-wide rate of 108.26 percent. *See Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation*, 60 FR 25691 (May 12, 1995) ("Order").

The Department published its notice of initiation of the first sunset review on April 3, 2000, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Reviews*, 65 FR 17484 (April 3, 2000). As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to

continuation or recurrence of dumping by the China-wide entity at a rate of 108.26 percent, the same rate as found in the investigation. *See Pure Magnesium from the People's Republic of China; Final Results of Expedited Sunset Review*, 65 FR 47713 (August 3, 2000) ("First Sunset Review").

On September 12, 2000, the International Trade Commission ("ITC") determined, pursuant to section 751(c) of the Act, that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Pure Magnesium from China*, 65 FR 55047 (September 12, 2000) and USITC Pub. 3346, Inv. Nos. 701-TA-696 (Review) (August 2000). On October 27, 2000, the Department published the notice of continuation of this antidumping duty order. *See Continuation of Antidumping Duty Order: Pure Magnesium from the People's Republic of China*, 65 FR 64422 (October 27, 2000).

The Department has not conducted any administrative reviews, changed circumstances reviews, scope rulings, or duty absorption reviews since the continuation of this order. The order remains in effect for all manufacturers and exporters of the subject merchandise from China.

Background

On September 1, 2005, the Department published the notice of initiation of the second sunset review of the antidumping duty order on pure magnesium from China pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Reviews*, 70 FR 52074 (September 1, 2005). The Department received the notice of intent to participate from US Magnesium, LLC ("US Magnesium")¹, the domestic interested party, within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. US Magnesium claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of pure magnesium. The Department also received a complete substantive response from the domestic interested party within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department received no response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of this order.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this sunset review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, the Department shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the

¹US Magnesium's predecessor, Magnesium Corporation of America, was the petitioner in the original investigation of this case.

subject merchandise for the period before and the period after the issuance of the antidumping duty order. In addition, section 752(c)(3) of the Act provides that the Department shall provide to the ITC the magnitude of the margin of dumping likely to prevail if the order were revoked. Below we address the comments of the interested party.

1. Likelihood of Continuation or Recurrence of Dumping

Interested Party Comments

US Magnesium argues that revocation of this order would likely lead to continuation or recurrence of dumping because China's high dumping margin, unchanged from the investigation except with respect to one new shipper, has been accompanied by constant, *de minimis* import volumes. See "Second Five-Year Review of Antidumping Duty Order on Pure Magnesium from China/US Magnesium's Response to Notice of Initiation" ("US Magnesium Response") (October 3, 2005) at 4. US Magnesium states the dumping margins have continued to exist since the Department issued the order and that a substantial margin was found in the one completed new shipper review. *Id.* at 5. Accordingly, US Magnesium claims that the Department should conclude that dumping has continued and will continue if the order were revoked.

US Magnesium states that U.S. imports of pure magnesium effectively ceased within six months of the issuance of the order, and the U.S. consumption has remained at *de minimis* levels. *Id.* Thus, US Magnesium contends that the virtual cessation of imports is a result of the order. *Id.*

US Magnesium also argues that the likelihood of continued dumping is heightened by the U.S. market competition, China's status as the world's largest producer of pure magnesium, China's small home market and dependence on exports, barriers to Chinese exports to other countries, and the low level of current Chinese prices. *Id.* Furthermore, the growth in imports of downstream magnesium products from China shows that Chinese producers cannot sell pure magnesium at non-dumped prices. Thus, U.S. Magnesium posits that China would dump large volumes of pure magnesium imports if the order were revoked. *Id.*

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly. With respect to this order, the Department has completed one new shipper review. However, the Department determined rates above *de minimis* for all Chinese manufacturers and

exporters during the original investigation. *See* Order at 25692. Dumping margins above *de minimis* levels remained unchanged, except with respect to one new shipper review, and continued to exist for shipments of the subject merchandise from Chinese producers and exporters throughout the life of the order. *See* First Sunset Review.

Pursuant to section 752(c)(1)(B) of the Act, the Department considered the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order. Using statistics provided by the ITC Dataweb, the Department finds that imports of pure magnesium from China have declined since the issuance of the continuation of the order in 2000. *See* attached import statistics. During the period of this sunset review, imports of pure magnesium from China decreased from 22.8 million kilograms in 2000 to 20.5 kilograms in 2004. *See* attached import statistics.

The Department normally will determine that revocation of an order is not likely to lead to continuation of dumping where dumping has declined accompanied by steady or increasing imports. *See* SAA at 889-90. However, if companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the order were removed. *See* SAA at 890. In this case, the Department determined dumping above *de minimis* levels in the first sunset review. The Department has also determined that pure magnesium imports from China have declined in volume during the period of this sunset review and that imports are lower in volume than before the order was issued. *See* First Sunset Review. Absent argument and evidence to the contrary, the Department has determined that dumping would likely continue or recur if the order were revoked based on dumping margins above *de minimis* levels, and import volumes below pre-order levels. Given these facts, it is not necessary that the Department address US Magnesium's other factors.

2. Magnitude of the Margin Likely to Prevail

Interested Party Comments

US Magnesium states that imports of pure magnesium have been subject to a dumping margin of 108.26 percent, except those from a new shipper that received a margin of 69.53 percent. *See* U.S. Magnesium Response at 4. US Magnesium notes the Department policy to normally provide to the ITC the margin that was calculated in the investigation. *Id.* In addition, US Magnesium reiterates the Department's policy to provide a rate from the investigation for companies that did not begin to ship until after the order was issued. *Id.* Therefore, US Magnesium contends that the Department should report to the ITC the dumping margin of 108.26 percent. *Id.* at 6.

Department's Position

The Department will normally provide to the ITC the company-specific margins from the investigation for each company. For companies not investigated specifically, or for companies

that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the “China-wide” rate from the investigation. The Department’s preference for selecting a margin from the investigation is based on the fact that it is the only calculated rate that reflects the behavior of exporters without the discipline of an order or suspension agreement in place. Under certain circumstances, however, the Department may select a more recently calculated margin to report to the ITC. *See Potassium Permanganate from the People’s Republic of China; Five-year (“Sunset”) Review of Antidumping Duty Order; Final Results*, 70 FR 24520 (May 10, 2005).

In this case, US Magnesium requests that the Department report to the ITC the margin found in the investigation. *See* U.S. Magnesium Response at 6. The Department determined the China-wide rate of 108.26 percent in the original investigation. *See* Order. The Department agrees with US Magnesium on selecting the above margin as the margin likely to prevail if the order were revoked.

In the instant case, the Department determines that it is appropriate to report to the ITC the margin from the antidumping duty order and the first sunset review because this rate is probative of the behavior of Chinese producers and exporters if the order were revoked as it is the only margin that reflects their actions absent the discipline of the order.

Final Results of Review

We determine that revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margin:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
China-wide Rate	108.26

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register*.

AGREE ____X____

DISAGREE_____

ORIGINAL SIGNED

Stephen J. Claeys
Acting Assistant Secretary
for Import Administration

12/29/05

(Date)